IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

THOMAS HAROLD STIGER

VS.

CIVIL ACTION NO. 1:10cv817

UNITED STATES OF AMERICA, ET AL.

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Thomas Harold Stiger, formerly an inmate at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought the above-styled lawsuit.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the defendants' motion for summary judgment be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. For the reasons set forth in the Report, the defendants' motion for summary judgment should be granted. The competent summary judgment evidence shows plaintiff made no complaints to medical personnel regarding his claims and he received medical treatment for many preexisting conditions.¹

Complaints and other submissions to the court that are not made under the penalty of perjury are not considered competent summary-judgment evidence. *Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300, 1306 (5th Cir. 1988).

Plaintiff has failed to establish that his alleged exposure to ETS has created or exacerbated a serious medical need.

<u>ORDER</u>

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this the 8 day of **October**, 2014.

Thad Heartfield

United States District Judge